IT 00-0016-GIL 02/25/2000 NET OPERATING LOSS AND NET OPERATING LOSS DEDUCTION

>   General Information Letter: The election to forgo the carryback of
>   Illinois net losses is independent of any election regarding federal
>   net operating loss carryovers.

February 25, 2000

Dear:

This is in response to your letter dated January 5, 2000 in which you request a
Letter Ruling. Department of Revenue ("Department") regulations require that the
Department issue only two types of letter rulings, Private Letter Rulings
("PLRs") and General Information Letters ("GILs"). PLRs are issued by the
Department in response to specific taxpayer inquiries concerning the application
of a tax statute or rule to a particular fact situation. A PLR is binding on the
Department, but only as to the taxpayer who is the subject of the request for
ruling and only to the extent the facts recited in the PLR are correct and
complete. GILs do not constitute statements of agency policy that apply,
interpret or prescribe the tax laws and are not binding on the Department. For
your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200
regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of
your question and the information provided require that we respond only with a
GIL.

In your letter you stated:

>   We have received conflicting advice from taxpayer services regarding
>   an Illinois net operating loss incurred in 1998, and have been
>   directed to your office in order to provide us with the state statute
>   regarding our situation.
>
>   In 1998, a company incurred a federal net operating loss in which a
>   portion of it was apportioned to Illinois. On Part IV of Illinois
>   form IL-1120, an election to forgo the Illinois net operating loss
>   deduction carryback period was made. Subsequently, the federal net
>   operating loss was carried back two years, and a refund was received.
>   One agent at the Illinois Department of Revenue informed us that since
>   the Illinois election to forgo the carryback period was made and the
>   federal net operating loss was carried back, the end result was that
>   the Illinois net operating loss was lost and no longer available for
>   carryforward. Several other agents' response was in direct opposition
>   to this consequence, so if you could provide us with the state statute
>   and law concerning this situation it would be most helpful.

DISCUSSION

In answer to your question, the Illinois net loss is a separate creature from the
federal net operating loss and operates independently. Illinois net losses are
authorized by §207 of the IITA. Section 100.2330 of 86 Il. Admin. Code sets
forth the procedure necessary to forgo a carryback period on an Illinois net
loss. Section 100.2330 states in part:

      b)   Election to forgo carryback period.

      1)   Any taxpayer entitled to a net loss carryback may elect to relinquish the entire carryback period with respect to a net loss for any taxable year ending on or after December 31, 1986. Such election shall be made on the taxpayer's return for the taxable year of the net loss and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

The language of §100.2330 makes clear that the election to forgo the carryback of an Illinois net loss is separate from any federal election. Therefore, electing to forego an Illinois net loss carryback while carrying back a federal net operating loss does not affect a taxpayer's right to carry forward the Illinois net loss. The two losses are distinct and have no bearing on each other so far as applying them to gains is concerned. You do, therefore, have the right to carry forward your Illinois net loss. I have enclosed a copy of the regulations that concern Illinois net losses.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

                        Very Truly Yours,

                        Charles Matoesian
                        Associate Counsel
                        Income Tax